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### Scripting justice

*Legal practice and communication in the late medieval law courts of Utrecht, York and Paris*

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## Court and society

### The production and consumption of justice

Until now, the focus of this thesis has been on the media – be they of a spatial, enacted, oral or textual nature – constituting the process of court communication. We have seen how law courts formed the locus of an extensive communicative activity, where diverse social issues were negotiated between its participants. The latter, while present in each of the previous chapters, have not stood at the centre of attention as such. Yet it was participants' intentions and their subsequent activities that drove much of these processes of socio-legal communication. In recent years, the users of law courts have received greater attention from social and legal historians. Daniel Lord Smail, for one, has proposed to approach developments in legal practice from a consumerist perspective. While courts were traditionally considered the exclusive result of rulers' attempts at acquiring socio-political monopolies of power, Smail emphasized the role of the law's consumers, that is those pursuing their cases in court, in shaping the court-based legal system of many late medieval societies. It was at least partly because litigants actively chose to invest in a legal process, that courts could become such dominant forms of legal practice. Thus the agents of change in this period were not just authorities coercing society into using their courts, but rather the people themselves who considered it profitable to bring their disputes there, instead of looking for an alternative solution.<sup>1</sup>

Smail's approach brings a large and often overlooked group of historical actors into the picture. He sensitizes us to the fact that legal practice concerned the interaction between many different people, and therefore involved more than just authorities judging social behaviour. Drawing on this approach I will now shift the attention slightly back to what Smail calls the producers of law, that is the courts themselves. For despite the fundamental role played by litigants in shaping the legal process, these courts were also more than indifferent entities catering to the needs of historical agents. As bodies consisting of multiple individuals but also having their own corporate identities, their character was more ambiguous than both the models of a uniform legal authority or an impersonal forum for legal messaging allow for. Instead they had their own complex of interests and motivations that informed the way in which they engaged with the people potentially interested in pursuing their disputes in court. Given Smail's contention that people's investment in the court was often not coerced, the question remains as to how – to continue his metaphor of the marketplace –

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<sup>1</sup> Smail, *Consumption* (2003) 4-21.

the producers of law then tried to convince their potential consumers to buy into their product. What – if any – was their marketing strategy? In order to gain a fuller picture of the communicative structures surrounding these courts, it is thus fundamental to consider the positions they claimed as speakers within these structures, that is as beleaguered promoters of a product to be desired.

Building on a Bourdieuan concept of communicative activity as set out in the Introduction, this chapter will trace the role of courts as strategic communicators in three steps. The first will be concerned with their habitus, that is the pre-given socially-determined factors that shaped the way in which these bodies engaged with the social world around them. This is a complex matter, as all courts had an essentially bipartite nature. They formed both an institution with particular corporate identities and motivations, and, at the same time, consisted of individual functionaries with their own interests and social involvement. The courts that operated in particular linguistic fields were thus the temporary results of a process of negotiation between individual and shared interests. From these composite habitus (pl.), the second part of the chapter will demarcate the various communicative fields within which the courts operated, and where they competed for the socio-linguistic capital of judicial legitimacy. Contrary to Bourdieu, I explicitly distinguish multiple fields of communicative activity, rather than identify just one. The linguistic fields on which these courts operated can be subdivided into a number of partly overlapping sub-fields, each with its own norms, media and forms of socio-linguistic capital. This is an important distinction, emphasizing that legitimating language used in one field may well have been illegitimate in another. I will consider both the forms of separation between these sub-fields and their modes of interaction, showing how strategic use of these modalities was crucial in the operation of the courts. Finally, building on such strategic considerations, the third part of the chapter looks at these courts' attempts to acquire socio-linguistic capital by presenting a specific view of society and its own role within it. Echoing my earlier interpretation of linguistic activity, it shows how legitimate speech acts could at the same time be the socio-linguistic capital sought, and a means of acquiring it.

### **The court as composite unity**

There is a tension in institutions of all kinds between the collective purpose of the body as such, and the individual interests of the people it comprises.<sup>2</sup> The first is often brought to the fore very

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<sup>2</sup> Recent literature in institutional economics stresses the way in which actors and institutions are fundamentally co-generative: John R. Searle, 'What is an institution?', *Journal of institutional economics* 1.1 (2005) 1-22; Gregory Jackson, 'Actors and institutions', in: Glenn Morgan, John L. Campbell, Colin Crouch, Ove Kaj Pedersen and Richard Whitley (eds.), *The Oxfords handbook of comparative institutional analysis* (Oxford, 2010) 63-81. Although I generally agree with this position, that is that actors shape an institution while the institution in its turn influences the actors, I do believe it too easily assumes individual conformation to a broader whole. I rather argue that the tension between actors' and institutional intentions is one of the main driving forces for the latter's change over time.

explicitly and publicly, while the latter generally operates under the surface, being couched in terms of collectivity and general agreement or – more negatively – corruption or rebellion. For historians interested in the social history of institutions, the public institutional identity is the easiest to get hold of. It is the image presented by the court in its official communication, found in most of the surviving documents. At the same time the public presentation of these institutions also obscures much of the basic activities and processes of negotiation taking place in the court. As chapter four has stressed, for the period under examination it is often difficult to obtain a clear idea of the individual interests involved in the daily practice of law courts. Many of the documents available fall under the category of official communication or are influenced by considerations of publicity. In order to get a better sense of the potential diversity of interests underlying these courts' activities, we will take a more detailed look at the socio-linguistic habitus of its members. By considering aspects such as functionaries' socio-economic backgrounds, their legal training, the possibilities for individual career paths and the role of kinship networks, this chapter will trace the communicative horizon and interests with which court members approached society as part of a broader institutional body.

For the early Consistory Court little is known about the background of the officials and other clerks serving there. Only from the late thirteenth century onwards do these men become more visible in the records. Their image is above all one of a small educated elite.<sup>3</sup> K.F. Burns, who has extensively traced the backgrounds of those holding the position of archiepiscopal official between the thirteenth and fifteenth centuries, names as general characteristics of these men both long careers in ecclesiastical administration and an education in Roman and/or canon law.<sup>4</sup> The same was true for most other judges at court, like the commissaries general and examiners general, as well as the majority of advocates. They generally held a university degree in law, and followed a longer ecclesiastical career path that spanned the different church courts of late medieval England.<sup>5</sup> An education, although slightly less advanced, was also required of the notaries and proctors of the court. They often held a Master of Arts degree, and were supposed to be qualified notaries public.<sup>6</sup> A third category of staff members of the court did not generally have any specific educational

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<sup>3</sup> As seen in chapter one, the statutes of archbishop Greenfield prescribed some twenty-five to thirty functionaries, excluding the apparitors, but – contrary to the ordinances for the Parisian *Parlement* – including proctors and advocates.

<sup>4</sup> Burns, *Medieval courts* (1962) 95-97.

<sup>5</sup> *Ibid.* 137-142. Helmholz, *Marriage litigation* (1974) 142, has shown how all functionaries judging marriage cases in the Consistory Court between the 1370s and 1420s held a university degree in canon and/or civil law, acquired in Oxford or Canterbury.

<sup>6</sup> Burns, *Medieval courts* (1962) 143. For more on notaries public, see: C.R. Cheney, *Notaries public in England in the thirteenth and fourteenth centuries* (Oxford and New York, 1972); Brundage, *Medieval origins* (2008) 394-406.

qualifications. Neither the apparitors, who were charged with summoning people to appear in court, nor the notaries' various assistant scribes were expected to have any formal legal schooling.<sup>7</sup>

A major ecclesiastical tribunal like York's Consistory Court could be an alluring place to work for ordained men. There were several theoretical limits for people with clerical status to practice law. Next to the more general prohibition on being involved in cases that could end in penal bloodshed, which limited their possibilities to practice in secular courts, various theorists discouraged clerics, especially above a certain rank, to work as advocate or proctor in general, as it was deemed inappropriate that they would receive riches in that way.<sup>8</sup> However, the York evidence suggests that these theoretical objections did not restrain clerical status holders from working in the Consistory Court. On the contrary, in the cause papers nearly all the proctors encountered are unequivocally designated as *clericus*. Furthermore, various marked examples – both from York and other English church courts – illustrate how positions in court often formed part of a broader ecclesiastical career path, sometimes even leading to deaconries or episcopates.<sup>9</sup> This is also supported by the available evidence for the geographical origins of court members. As Burns shows, the archiepiscopal officials, about whom most information is available, can be traced both to Yorkshire and beyond, suggesting the court's inclusion in a network of supra-regional career paths.<sup>10</sup> The ecclesiastical legal profession thus provided many an occasion for social mobility.<sup>11</sup>

This state of affairs had various implications for the triangular relations between the individual members of the Consistory Court, the tribunal as a whole and the social groups and individuals with which they were engaged. The role of education was fundamental to these men's relation to society at large. As I will argue later on, the university-trained majority of the court formed a separate communicative in-group. At the same time, however, there were also several factors potentially separating individual members of this in-group. As the careers of some individuals suggest, for these men the position in court often presented a step in their individual career paths. The inclusion of the Consistory Court in such systems of ecclesiastical career advancement thus stimulated its members' private interests over those of the body as a whole. Such dominance of individual career paths could also be seen among the staff of the chapter of York Minster, a group both physically and professionally close to the members of the Consistory Court. Here some of the most prestigious or rewarding posts were regularly negotiated between English and non-English clergymen.<sup>12</sup> Likewise,

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<sup>7</sup> Burns, *Medieval courts* (1962) 144-145, 152-155.

<sup>8</sup> Brundage, *Medieval origins* (2008) 468-471.

<sup>9</sup> Burns, *Medieval courts* (1962) 88-95, 137-142; James A. Brundage, 'The bar of the Ely consistory court in the fourteenth century. Advocates, proctors, and others', *Journal of Ecclesiastical History* 43 (1992) 541-560, at 543-554; Brundage, *Medieval origins* (2008) 349-350, 391-394.

<sup>10</sup> Burns, *Medieval courts* (1962) 88-97.

<sup>11</sup> Cf. Brundage, *Medieval origins* (2008) 349-350.

<sup>12</sup> Dobson, *Later Middle Ages* (1977) 75-82.

the prestige and opportunities for advancement that positions like that of the official or commissary-general could provide, made such posts desirable. This need not imply a complete lack of embeddedness of court officials in the court and its direct York context. But it is important to keep in mind that the Consistory Court often consisted of individuals who had acquired certain privileged social positions, in many cases through an active investment or powerful benefactors of their own, and who might therefore be willing to continue working their way up within the legal or ecclesiastical hierarchy.

For ambitious French administrators, the late medieval *Parlement* of Paris could also form an important step in their professional careers. Yet, whereas members of the Consistory Court seem to have followed very individual career paths, membership of the *Parlement* became a near-hereditary post shared among a small number of influential families. The development of this curial 'milieu', as it is dubbed by Françoise Autrand, took place over some two and a half centuries. As the *Parlement* originated in the itinerant royal court, initially its members would consist of royal counsellors, both lay and clerical. They were selected by the king every time that the court gathered, and nearly always included a number of secular and ecclesiastical dignitaries, like counts, dukes, bishops and abbots.<sup>13</sup> This fundamentally *ad hoc* character of the *Parlement* began to change during the early fourteenth century. Already in the last years of the thirteenth century it is possible to identify a small, stable group of counselors, who formed part of the *Parlement* at practically every session. This permanent core expanded during the first part of the fourteenth century, until a royal ordinance in 1345 formally made membership of the *Parlement* permanent.<sup>14</sup> Significantly, the appearance of a stable staff of counsellors occurred in tandem with other major changes in the constitution of the *Parlement* in the same period, such as its locational permanency in the *Palais de la cité* and its increasing textual case load.<sup>15</sup>

Related to the changing character of the *Parlement* during the fourteenth century were several major developments in the background of its members, as well as in their relation to the institution of the court and to society as a whole. In the early development of the *Parlement*, in line with its role as royal council, its members formed a body of representatives from different sections of society, including the nobility, clergy and urban citizenry. As a more-or-less permanent core began to take shape, its members increasingly became full-time legal administrators. As Raymond Cazelles has shown, by the time of the first Valois kings a great number of royal officials had received legal schooling.<sup>16</sup> Although local connections could and often did still play a role, the educational and social backgrounds of these officials seem to have become more uniform during the fourteenth and

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<sup>13</sup> For the – strongly fluctuating – numbers of court members in this and later periods, see chapter one.

<sup>14</sup> Aubert, 'Nouvelles recherches', pt.1 (1916) 88-89, 240, 268; Idem., 'Nouvelles recherches', pt.2 (1917) 57-58.

<sup>15</sup> See chapter two and chapter four respectively.

<sup>16</sup> Raymond Cazelles, *La société politique et la crise de la royauté sous Philippe de Valois* (Paris, 1958) 297-300.

fifteenth centuries.<sup>17</sup> This development into a specific curial milieu could also be seen in the changing relations between members of the *Parlement*. Autrand distinguishes three main phases in these internal relations for the period between 1345 and 1454. At the beginning of this period, in line with the less permanent character of positions in the court, its functionaries formed part of so-called *équipes*, political interest groups centered around specific princes or other royal servants of great standing. These *équipes* encompassed the royal administration as a whole, and involved the *Parlement* in broader political networks. Positions in the *Parlement* were simply one way for members of these, often regionally-based *équipes* to further their particular interests in the kingdom.<sup>18</sup> With the development of a specific curial milieu, ties of allegiance came to be based more on the *Parlement* itself. They were mostly family-based alliances, through which sitting members tried to surround themselves with relatives or other confidants. In contrast to the extra-curial practice of the *équipes*, these networks were mostly limited to the *Parlement* itself.<sup>19</sup> In the third phase sketched by Autrand this trend towards the *Parlement* as a family-based network continued even further. Instead of only surrounding themselves with relatives as they had done before, members of the *Parlement* now even tried to let their sons or sons-in-law inherit their seats, creating what were effectively parliamentary dynasties.<sup>20</sup>

In all these phases members of the *Parlement* were involved in various social networks, either – as in the fourteenth century – cutting through or, to the contrary, forming an organizational basis for the court. Autrand connects changes in the social layout of the *Parlement* firmly to the rise of the French state. In her view there is a clear development from the fourteenth-century institution that individuals used to further their own interests, to a fifteenth-century curial milieu to which a number of important families owed their primary loyalty. It was these families, Autrand argues, working for and within their institutionalized milieu, which formed the most important basis for the establishment of the state.<sup>21</sup> Such a focus on the state-based development of the *Parlement*, however, is in danger of overemphasizing the apparent unity of the curial milieu vis-à-vis any signs of internal political tension. The presence of family-based alliance structures, for example, as well as the attempts by court members to pass on their seat to their relatives, does imply the existence of conflict areas within this judicial body itself. Much of what Autrand identifies as a fundamental group mentality in the fifteenth century, was, I would argue, part of a publicly professed institutional ideology rather than an all-out change in the social structures and political interests underlying this professed unity. The *Parlement* was an institution composed of multiple individuals, whose specific

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<sup>17</sup> Aubert, 'Nouvelles recherches', pt.2 (1917) 199; Autrand, *Naissance* (1981) 265-266.

<sup>18</sup> Autrand, *Naissance* (1981) 54, 56-57, 108.

<sup>19</sup> Ibid. 66, 108, 264.

<sup>20</sup> Ibid. 103-104, 108.

<sup>21</sup> Ibid. 108, 264-267.

and kin group-based interests often overlapped, but could just as well conflict with the professed common intentionality of the body as a whole.

Finally, the character of the Council of Utrecht presents us with another particular constitution of a judicial body. As seen in chapter one, its annual indirect election by the local guilds meant that the Council had a very different relation to the society it judged than was the case for both York and Paris.<sup>22</sup> Being basically elected functionaries, the members of the Council were – formally at least – dependent on a considerable group of people for their position. That said, only a small group of Utrecht citizens – let alone of its actual inhabitants – were eligible to actually become council members. Dirk Berents has suggested, on the basis of late fifteenth-century lists of forced loans, that the majority of council members came from the wealthiest segments of the city.<sup>23</sup> As in York and Paris, it is likely that a socio-economic elite provided most members of this court. An important difference, however, was the educational background of most council members. Whereas the strong reliance on learned legal traditions in the Consistory Court and the *Parlement* meant that most of their members would have had some kind of legal schooling, this was not the case in the Council of Utrecht. There was little requirement or motivation for counsellors to invest in formal legal schooling when most of the cases they dealt with concerned local customary law. Where learned legal traditions did play a role, was when external ‘masters and jurists of the law’ were consulted for advice in specific – mainly instance – cases.<sup>24</sup> But the fact that the Council made an appeal to external legal specialists in these cases confirms the rarity of formal legal schooling amongst its members. Both the process of appointment and the absence of an educational distinction of the Utrecht counsellors thus suggest a particularly strong integration of the court in its locality.

The latter impression is strengthened when considering the influence of informal social structures on the constitution and practice of the Council. Utrecht’s late medieval history was rife with the intense party strife between various elite groups, leading to major conflicts and even several radical power changes within the city.<sup>25</sup> These parties were usually based on the heads of a few influential families, extending throughout different layers of society in the form of these leaders’ relatives and dependents, not unlike the *équipes* in the early *Parlement*.<sup>26</sup> The Council, with its extensive political and judicial competences, became one of the most important areas for the proliferation of these disputes. A series of political conflicts between the parties of Lichtenberg and Lokhorst spanning the years 1413-1415, illustrates the role the Council could play in these struggles. In this period both

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<sup>22</sup> Also see the same chapter for the varying number of court members involved in different cases.

<sup>23</sup> Berents, ‘Gegoede burgerij’ (1972) 90-91.

<sup>24</sup> Muller (ed.), *Rechtsbronnen*, Introduction (1885) 104, 172; Berents, ‘Gegoede burgerij’ (1972) 19.

<sup>25</sup> Justine Smithuis, ‘Politiek en geweld in een laatmiddeleeuwse stad, Utrecht, 1400-1430’, *Tijdschrift voor geschiedenis* 123.2 (2010) 240-253, at 242, identifies four successful power changes and no less than ten failed ones for the period between 1400 and 1430. Also see Berents, *Misdaad* (1976) 97-102.

<sup>26</sup> Smithuis, ‘Politiek’ (2010) 245-248.

parties were locked in a fierce struggle for political influence in the city, leading to both successful and unsuccessful power take-overs. On each of these occasions the Council would banish or otherwise punish members of the losing party, usually for reasons of holding ‘unreasonable meetings’ (*onredelike vergaderinge*) or sowing discord.<sup>27</sup> In such cases the Council was thus very directly employed in a political conflict among the city’s socio-economic elite. But even outside of such extremely politicized instances, the council members did not operate as a unified body on every occasion. The Guild Letter of 1455, which was issued after the downfall of the two most important political factions of the time had temporarily strengthened the position of the guilds vis-à-vis influential patriciates, explicitly anticipated instances of disagreement within the Council.<sup>28</sup> For instance, if the Council could not reach a unanimous decision in a case, it would be decided by ballot (*bonen*). The result of the ballot would then be put into practice, and individual court members who disagreed were not allowed to speak against the result, under penalty of exclusion from the Council for ten years.<sup>29</sup> Although this prescriptive measure cannot conclusively tell us whether and how often disagreements within the Council slowed down the decision-making process, within its direct historical context – that is the guilds’ taking back control from conflicting political factions – it was likely a concrete reaction to actual disagreements in practice. As we have seen for the Consistory Court and the *Parlement*, in the daily operation of the Council there was a constant tension between its institutional identity, and the many individual interests of its members.

Whereas the Utrecht Guild Letter of 1455 provides evidence for the tension between corporate and individual interests, it likewise shows how the Council explicitly professed the ideal of speaking with one voice. While it foresaw the possibility of internal discord, the norm to be attained and confirmed was a publicly expressed communal agreement. And the same was true for the other two cases. Whereas the *Parlement* during the fourteenth and fifteenth centuries comprised members with various alternative solidarities and interests, it put forward a public face that emphasized institutional unity. Likewise, the Consistory Court’s professed commonality did not preclude individual members from pursuing their own career paths by means of, rather than subject to this one court. Despite the diverse social, economic and educational backgrounds of their members, one of the common threads in the late-medieval history of these courts was their conscious attempt to present themselves as a collective, coherent body, speaking with one voice and acting uniformly. In

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<sup>27</sup> Berents, *Misdaad* (1976) 102-106. Such politically-motivated verdicts of banishment can be found in HUA 701-1.16: *Buurspraakboek* 1410-1414, fols. 154r, 158r.

<sup>28</sup> The 1455 Guild Letter is edited in: Johan van de Water (ed.), *Groot placaatboek vervattende alle de placaten, ordonnantien en edicten der edele mogende heren staten ’s lands van Utrecht. Mitsgaders van de edele groot achtbare heeren borgemeesteren en vroedschap der stad Utrecht tot het jaar 1728 ingesloten*, pt.3 (Utrecht, 1729) 80-85.

<sup>29</sup> *Ibid.* 83.

what follows I will discuss several ways in which such idealized corporate unity was professed vis-à-vis members' potential other interests.

One means by which the three law courts sought to emphasize their uniformity was through a strong continuity in nomenclature. This is remarkable, given the fundamental changes that took place in the actual constitution and practice of these bodies over time. Such continuity of nomenclature has often misled historians in their assumptions regarding these bodies, attributing to them a continuity of character that may readily be doubted. For instance, the term 'city council' can be found in Utrecht charters as early as 1196, when a group called *consules civitatis* is said to operate as one of the representatives of the citizens of Utrecht vis-à-vis the episcopal landlord. Since that time the nomenclature has changed little. While the group alluded to changed from a body supporting the aldermen to an independent urban authority, subsequently seeing its powers wax and wane over the fourteenth and fifteenth centuries, it kept being referred to as the Council.<sup>30</sup>

In Paris the term *parlement* was originally a temporal designation, referring to the moment when the royal court turned itself into a judicial body. In the first *Olim* volume, for example, entries often note how a judicial act has been performed 'in this court, in a certain *parlement (in hac curia, in quodam parlamento)*'.<sup>31</sup> In later volumes of the *Olim*, however, the use of the term gradually expands. The fourth *Olim* volume, for instance, regularly notes how cases are brought 'to the court of the *parlement* of Paris' (*in curia parlamenti Parisiensis*), suggesting an institutional and spatial rather than purely temporal understanding of the term.<sup>32</sup> And this institutionalized use of the term *parlement* becomes even more explicit when entries at some point even begin to state how documents were transmitted 'to the *parlement* in Paris' (*ad parlamentum Parisius*), regarding the term *parlement* on its own as a sufficiently clear indication of the court concerned.<sup>33</sup> Thus, while the occasional judicial sessions of the royal court changed into a permanent body, its most explicit form of self-identification – that is how its members referred to their own institution – emphasized continuity.

In York a similar development took place from the court as a temporary judicial form of the more general archiepiscopal court, into a permanent legal body. Judging by the court's own sources, the term *consistorio* came over time to designate basically three separate things. One – the most common – was the old temporal denomination of the time periods during which cases would come before the court, as in 'the first consistory after the feast of the conversion of saint Paul, beginning

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<sup>30</sup> Muller (ed.), *Rechtsbronnen*, Introduction (1885) 17-21.

<sup>31</sup> AN X<sup>1A</sup>1, fol. 192v (1272); Beugnot (ed.), *Les Olim*, pt.1 (1839) 909.

<sup>32</sup> AN X<sup>1A</sup>4, fol. 288v (1315); Beugnot (ed.), *Les Olim*, pt.3.2 (1848) 982.

<sup>33</sup> AN X<sup>1A</sup>4, fol.301v (1315); Beugnot (ed.), *Les Olim*, pt.3.2 (1848) 1032.

on the twenty-seventh day of January'.<sup>34</sup> Another sense in which it regularly appears, especially in the cause papers, is as a spatial indication when sessions are said to have taken place 'in the place of the consistory'.<sup>35</sup> But as in Paris, the documents from York too increasingly consider the indication 'consistory' as standing for the court as an institution, regularly appearing in place of the more common 'court of York' (*curia Eboracensis*).<sup>36</sup> Like the Utrecht Council and the *Parlement*, while the Consistory Court went through marked changes in character, constitution and competences over the centuries, in the words it used to speak about itself the suggestion of a longstanding continuity of practices came to the fore.

Such continuity of nomenclature served several purposes. First, there is the suggestion of continuity itself. Although the thirteenth-century legal gatherings of the French royal court were a completely different matter from the early fifteenth-century judicial institution residing in the *Palais de la Cité*, the latter's labelling as *Parlement* and *Curia regis* linked it explicitly to earlier forms of judicial activity and created and kept the emphasis on a specific myth of institutional origins. Considering the increasingly independent role that the *Parlement* sought vis-à-vis the king in its daily business underscores the ideological importance of its nomenclature. Such emphasis on continuity could furthermore suggest a certain character of the court. The way in which the Council of Utrecht kept referring to itself as a 'council', that is a body providing its lord with counsel, emphasized the relative power and independence it held vis-à-vis the bishop, by emphasizing a past feudal relationship. Last, but certainly not least, the nomenclature suggested the body's corporate identity. This could have clear political overtones, as for example when the factionalism between leading Utrecht families was covered with the cloak of a unified Council representing the common interests of the city. But the suggestion of unity could also be integrated more subtly into the program of institutional ideology. So whereas the archiepiscopal administration developed into three distinct and largely independent bodies – namely the Consistory Court, the Court of Audience and the Exchequer – in most official documents and registers all three were usually considered together as the 'Court of York' (*Curia Eboracensis*), emphasizing a common role in the archiepiscopal household. Thus the way in which these courts formally identified themselves emphasized aspects that could differ markedly from – or at least gave a very limited view of – the many forces that shaped their daily practice. Whereas the relation between such institutions and their individual members could

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<sup>34</sup> YML M 2(1)b, fol. 1r.: *Consistorium proximum post festum conversionis sancti Pauli incipiens xxvii die mensis Januarii.*

<sup>35</sup> For example BIA CP.E.259: '*Ista sententia fuit lecta et lata per dominum officialum in loco consistorii pro tribunali sedenti...*' (1368).

<sup>36</sup> As in BIA CP.E.233: '*Lata fuit ista sententia per dominum officialem infrascriptum in consistorio Eboracensis...*' (1397).

take many shapes, from strong common intentionality to conflicts of interest, these naming practices strongly emphasized institutional above private identities.

That the potential conflict of identities was a matter of concern becomes even clearer when considering the obligation – common to all three courts’ officials – to take an oath. For Archbishop Greenfield, drawing up his statutes for the archiepiscopal court in 1311, the first item on his list was to decree that the presiding judge, be it the Official or his Commissary General, must take an oath upon assuming office. With the oath, these functionaries formally promised to avoid any external loyalty, partiality, enmity, favour or perceived profit to cloud their judgement, and to observe the court’s ‘laudable customs’ (*laudabiles consuetudines*).<sup>37</sup> The advocates – most likely including the proctors – were likewise required to swear an oath, although in this case on an annual basis. In this oath, which the statutes spelled out in full, they promised to operate justly, truthfully and diligently, and not to challenge the jurisdiction or customs of the court in any way.<sup>38</sup> The admission oath for the York advocates developed within a broader canonical context. With the increasingly frequent use of advocates from the twelfth century onwards, ecclesiastical courts in Europe began to require oaths from these legal practitioners before they were allowed audience in the court. Although in the first instance a matter for individual courts, the Second Council of Lyons in 1274 prescribed a more general model for such oaths in its constitution *Properandum*.<sup>39</sup> The oath required of the York advocates seems to be derived directly from this general vow. The judges’ oath also encompassed ethical standards that had long since been points of discussion in canon law, although to unite such standards in a formal pledge, as the Greenfield statutes did, was not generally required.<sup>40</sup>

But the canon legal tradition was not necessarily the only source for systems of oath swearing by legal officials. As early as the second half of the thirteenth century, the French kings required officials, including sergeants, bailiffs, provosts, viscounts, mayors and judges, to publicly swear an oath before taking up their post.<sup>41</sup> Though not exclusively concerned with these officials’ judicial activities, the topics they touched upon strongly overlap with what the York judges were supposed to swear, for example requiring oath-takers to judge indiscriminately and in keeping with royal and other laws. Thus a second, feudal tradition formed the initial basis for practices of oath-swearing in the *Parlement*. To this were added, likely under influence of the stipulations of the Council of Lyons, specific regulations for oath swearing by advocates, whether operating in the *Parlement* or other

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<sup>37</sup> Wilkins (ed.), *Consilia*, vol.2 (1737) 409.

<sup>38</sup> Ibid. 410. See Appendix 2.2. for a full transcription of the oath.

<sup>39</sup> Brundage, *Medieval origins* (2008) 283-306, including a modern English translation of the major part of the oath at 301-302.

<sup>40</sup> Ibid. 382-384.

<sup>41</sup> As expounded in two ordinances by Louis IX from 1254 and 1256. See: Laurière (ed.), *Ordonnances*, vol.1 (1723) 65-75 and 77-81.

royal jurisdictions.<sup>42</sup> Thus, similar to the stipulations in York, the king called on advocates to operate in good faith (*bona fide*), diligently (*diligenter*) and truthfully (*fideliter*), and to drop a case if they considered it to be unjust.<sup>43</sup> In 1291 both oath-swearing traditions came together in an ordinance of Philip IV concerning the *Parlement*.<sup>44</sup> The text explicitly refers to the earlier regulations on the oath-taking of royal officials (1254/1256) and advocates (1274) respectively, combining both groups under the institutional umbrella of the *Parlement*.<sup>45</sup> That these oaths played an important role in actual legal practice is suggested by their inclusion in the *Parlement's* registers. The 1340 criminal register, for example, contains a transcript of the extensive oaths the advocates and proctors were supposed to take before being allowed to plead in the *Parlement*.<sup>46</sup>

Oath-taking also played a major role in Utrecht. One of the fourteenth-century registers of banishments contains a transcript of the oath that council members supposedly took when assuming office.<sup>47</sup> During the fifteenth century, this oath was copied in a slightly adapted form into the back of the book of bylaws, called *Die Roese*, together with numerous other oaths of office, like those for the aldermen, the guilds' *oudermannen* and a variety of special commissaries.<sup>48</sup> The council members' oath echoes the broad character of the Council's activities, speaking in general terms about the members' responsibility to serve the city through good and unbiased counsel, and to take an active part in the council meetings. More specific tasks are touched upon in the oaths taken by the various special commissions, either formed by a selection of council members, or by specially appointed functionaries. For example, the officials responsible for collecting the excise on beer, called *sijsmeesters* in the sources, would promise not to favour one brewer over another.<sup>49</sup> In the same vein, members of the *vive*, responsible for judicial investigations, took an oath not to withhold any information in a case, notwithstanding his own or his relatives' interests.<sup>50</sup> A common theme in these oaths was thus the obligation to put the interests of the city, its guilds and the Council before those of ones relatives, friends, or oneself.

Oaths served various functions. First, the court made its officials formally – that is to say, legally – and publicly accountable for their actions through them. If a member of the court behaved in a way that was considered to be contrary to the interests of the entity that gave him his power – be it in

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<sup>42</sup> Stipulated in an ordinance by Philip III from 1274. See: Laurière (ed.), *Ordonnances*, vol.1 (1723) 300-301.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid. 320-322, esp. articles 8, 9 and 11.

<sup>45</sup> See Telliez, *Officiers* (2005) 85-90, for a comparison with oath-taking practices in several other French officialities.

<sup>46</sup> AN X<sup>2A</sup>4, fol.18v-19v (1340). See Appendix 3.1 and 3.2 for a full transcription.

<sup>47</sup> The oath is transcribed on the unfoliated front fly leaf of the Council's *Th.2* register: HUA 701-1.227. See Appendix 1.4 for a full transcription.

<sup>48</sup> Muller (ed.), *Rechtsbronnen*, vol.1 (1883) 386-394.

<sup>49</sup> Ibid. 386.

<sup>50</sup> Ibid. 393-394.

the form of a kingdom, an (urban) community or the court itself – he could be penalized on the basis of breaking his oath.<sup>51</sup> Oaths thus ideally intended to prevent practices perceived as unaccountable amongst court officials, in particular those that put private interests before those of the court.<sup>52</sup> At the same time, in singling out wrong activities, oaths formed a guideline for the behaviour officials were supposed to display. By distinguishing categories of good and bad behaviour, oaths in a sense created and defined both the practices they attempted to further and those they intended to extirpate.<sup>53</sup> The sources suggest, furthermore, that the message of these oaths was meant to be received by a broader public. The 1254 and 1256 regulations, for example, required officials to take their oath during a public session of the court (*en pleine assise* or *en pleine place*), to make sure that it would be observed more strictly.<sup>54</sup> Likewise, archbishop Greenfield, in drawing up the court statutes that set out the oaths for various functionaries, specified how these same statutes were to be read out publicly on a yearly basis.<sup>55</sup> Such oaths could thus be a public display of court ideology, binding officials to the ideals of the institution they served. What is more, through this same process of ideological binding they also functioned to define the court itself. For in requiring an oath of office from its officials, the court – here understood as the complex of expectations of the people working in and otherwise using the court – explicitly singled out these individuals from general society, and related them to each other according to their specific role in the legal process. It thus emphasized the *esprit de corps* of the group of individuals constituting the court, lauding their collective morals, and contrasting these explicitly with the private interests that might threaten this unity.

Late medieval law courts tried to curb the individual interests of their many members within an overarching whole of common intentionality and identity. That is not to say that they always succeeded. There were alternative forms of organization and practice – such as kinship networks or opportunities for individual career paths – that could cause tensions between what the institution was said to stand for, and the interests and loyalties of the individuals working within it. In order to counter potential disunity and mitigate conflicts of interest, courts – or, more precisely, those profiting most from their univocal appearance – performed curial unity in several ways. Through their stable nomenclature – *Parlement*, *Council*, *Curia* – they identified themselves with certain past structures of organization, echoing a particular foundational myth. In a way reminiscent of the ritualization of legal practices as seen in chapter three, the repeated application of certain terms to designate a specific judicial gathering of men, suggested a continuity that provided a court with an ideological permanency vis-à-vis the ever-changing socio-political relations of its members. The oaths

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<sup>51</sup> See: Brundage, *Medieval origins* (2008) 302-303, for examples of the penalization of oath-breakers.

<sup>52</sup> Helmholz, *Marriage litigation* (1974) 152.

<sup>53</sup> Telliez, *Officiers* (2005) 85-90.

<sup>54</sup> Laurière (ed.), *Ordonnances* (1723) 70, 79.

<sup>55</sup> Wilkins (ed.), *Consilia*, vol.2 (1737) 413.

that court officials were required to take worked in a similar way. By formally promising to fulfil their role in a particular manner, these functionaries performed the submission of their individual interests to those of the institution as a whole. They did so linguistically, that is by speaking certain words, but in many cases also enacted these words bodily, by taking the oath in a publicly staged setting. The producers of justice were thus complex constellations. Integrated into society through the social habitus of their members, ideologically they tried to stress their transcendence of such private interests and alternative loyalties. This tension, between forming an essential part of society and claiming to be impartially surveying it from a distance, was also one of the central issues in these courts' interaction with the law's many potential consumers.

### **Fields of legal speech**

Bourdieu, in discussing communicative activity, considers linguistic markets as separate arenas of speech activity with their own particular characteristics. When a social actor performs a speech act, its form and implications are determined by the interaction between the actor's habitus and the specific linguistic field where the utterance is done.<sup>56</sup> Late medieval law courts were often not limited to only one linguistic field in this sense. Rather, they interacted in several different social and institutional contexts, each forming its own field of communication, with specific participants, norms and media. Building on Bourdieu's concept of speech activity, in what follows I will trace the different communicative fields on which these courts operated, sketching the positions of their participants and the linguistic norms and media governing participation in them. Strictly delimiting these fields of communicative action is often impossible. On the contrary, much of the courts' legal activity was specifically concerned with defining and redefining the limits of fields of communicative activity. For it was through such practices that the court and other social actors attempted to manipulate their positions on these fields, as well as the fields themselves. Thus, next to tracing the arenas of speech activity, I will also consider the attempts by the court to influence the scope and character of these fields. Through this twofold analysis of the courts' communicative landscape, we gain a better understanding of the way in which they related to and positioned themselves within their broader social contexts.

Both the *Parlement* of Paris and York's Consistory Court comprised for a large part university trained lawyers. This background strongly influenced the types of language and rhetoric used, which thereby came to function as linguistic boundaries of a specific curial speech community. The Consistory Court is a case in point. The cause papers produced by this court strongly emphasize the closed character of its professional speech community. The fact that they were written in Latin was

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<sup>56</sup> Bourdieu, *Language* (1991) 37-65.

not necessarily the main factor limiting their accessibility for outsiders. But the Latin of these records is highly abbreviated, requiring a specialized vocabulary (Figure 12). Furthermore, studying this court's records is like entering a completely different world, with its own language and system of logic. For the average litigant, seeking or being forced to bring his conflict to court, much of this legal discourse was difficult to follow, let alone participate in. The procedural requirements as constantly encountered in the sources, such as the parties' presentation of *positiones* or *responsiones* to state or refute the exact points on which the legal argumentation would proceed, stood far from the terms

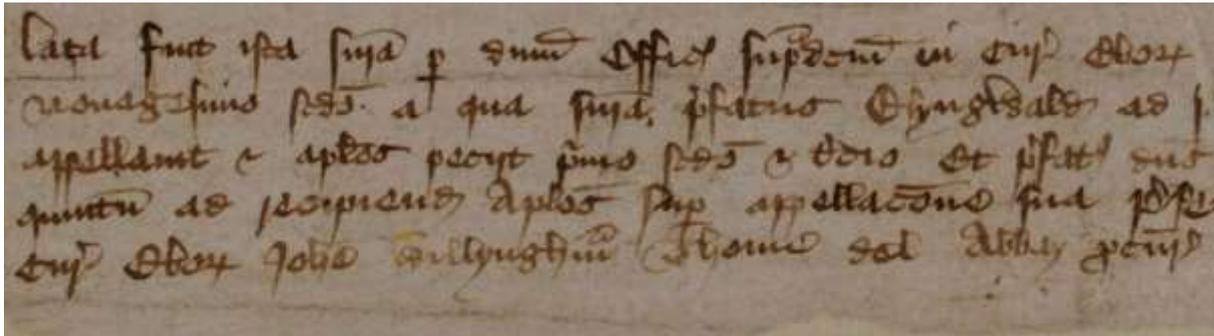


Figure 12: Abbreviated latin in a (*Lecta et*) *lata*-clause in the Consistory Court's cause papers (BIA CP.E.193).

in which the conflict was conceptualized outside of the courtroom.<sup>57</sup> And the same can be said of a legal measure like the abjuration *sub pena nubendi*. According to this procedure, two litigants, appearing in court on charges of fornication, could be forced to contract a conditional marriage. This meant that if they would have sexual relations after that point, they would automatically be married.<sup>58</sup> Although, from the point of view of canon law, such measures followed a clear series of causal relationships, in the specific social setting where the concerned events took place, very different concerns underlay people's thoughts and actions.

This was after all the discourse of legal professionals, concerned with applying their theoretical knowledge to the complexities of social life. It was a university-bred discourse, whose mastery formed the main capital required – though never explicitly stated – for participating in the legal business of the court. Both linguistic forms and the media used to communicate them limited participation to those trained in using them. Within this linguistic field the court interacted with other groups of trained legal specialists. In appeal procedures the Consistory Court would communicate both with superior and inferior courts in the ecclesiastical court hierarchy, evidenced for example by the survival of sentences contained in letters to court officials.<sup>59</sup> This same field could also encompass interactions with a broader range of legal actors. In the case of the English church

<sup>57</sup> See: Helmholz, *Marriage litigation* (1974) 14-16, for more on the presentation of *positiones* and *responsiones* in English church courts.

<sup>58</sup> Richard Helmholz, 'Abjuration *sub pena nubendi* in the church courts of medieval England', *The jurist* 32 (1972) 80-90.

<sup>59</sup> See the treatment of such letter-sentences in chapter four.

courts, this would principally concern the system of royal courts, with which they regularly competed for jurisdiction.<sup>60</sup> These royal courts were also increasingly staffed by university-trained legal professionals, thus creating a common linguistic ground for interaction in a specific communicative field.

However, this field of legal discourse was not the only speech arena within which the Consistory Court was involved. For, far from being completely detached from ordinary society by walls of professionalized discourse and language, it interacted with it in several ways. This interaction was often of a non-textual character, building on oral and enacted media. The sentence readings, for example, orally performing the court's written legal process in the Minster or another church, were more than a formalization of the textual sentence. They also engaged another kind of audience in a discussion about the solutions for social conflict and the role of the court in providing them.<sup>61</sup> And the same was true for other publicly performed aspects of the legal process, such as public penitences for contumacy or formal oaths of compurgation.<sup>62</sup> On the face of it, this field of communication may appear to be one-directional, emanating from the court outwards. However, a strong argument for the essentially multi-directionality of communication in this field is provided by the extensive role of both witness testimony and its more general variant of public repute – or *fama publica* – in the procedure of the court.<sup>63</sup>

An often-cited suit from 1328 provides a case in point. In it Elizabeth, daughter of Simon Lovell, claimed to have contracted a valid marriage with Thomas, son of Robert of Marton. The latter, however, denied having done so, claiming to have consented to no more than a conditional marriage.<sup>64</sup> In attempting to make her case, Elizabeth drew on two forms of evidence, the first provided by individual witnesses, and the second by the alleged common knowledge in the deanery of Ryedale. Nine people testified on her behalf, presenting their accounts of a number of occasions that were considered crucial for the case, in particular because of the words of consent supposedly spoken by Thomas and Elizabeth in these situations. In addition, the libel and positions presented in the case also mentioned explicitly how this alleged consent was not just known by these nine individuals, but was 'public, notorious and manifest' (*publica, notoria et manifesta*) in the whole

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<sup>60</sup> Richard Helmholz, 'Writs of prohibition and ecclesiastical sanctions in the English courts christian', *Minnesota law review* 60 (1976) 1011-1033.

<sup>61</sup> See chapter three and chapter four for more on the sentence readings.

<sup>62</sup> For the practice of public penitence, see chapter three. For compurgation oaths, see: Richard Helmholz, *The Oxford history of the laws of England. The canon law and ecclesiastical jurisdiction from 597 to the 1640s* (Oxford, 2004) 599-642.

<sup>63</sup> For the practice of taking testimony, see chapter four. For the role of *fama publica* in the English church courts, see: Helmholz, *Marriage litigation* (1974) 46. Also see: Thelma Fenster and Daniel Lord Smail (eds.), *Fama. The politics of talk and reputation in medieval Europe* (Ithaca, NY, 2003).

<sup>64</sup> BIA CP.E.18. Several documents from the case have been edited in: Helmholz, *Marriage litigation* (1974) 191-195. The case is discussed at length in: Pedersen, *Marriage disputes* (2000) 110-114; Donahue, *Law* (2007) 96-97.

deanery, and that there was ‘public speech and rumour’ (*publica vox et fama*) about it. Here different social groups and individuals thus spoke to the court directly or indirectly, providing their interpretation of events and norms of behaviour.<sup>65</sup> There existed a bi-directional flow of messaging between the court and other segments of society, which was concerned not only with the evaluation of certain ways of behaving, but also with promoting the social legitimacy of the court in judging this behaviour. In short, there are at least three different fields of socio-legal communication to account for when treating the Consistory Court: the field that it itself constituted as overarching institution to which individual court members had to relate themselves, a field of university-bred legal discourse on which it negotiated with other legal authorities over categories of jurisdiction and judicial power, and a field of broader social legitimacy where it interacted with those whose behaviour it claimed to judge.

It would be pointless to fix strict boundaries to the foregone communicative fields, as becomes even clearer when comparing the analysis of the Consistory Court with that of the other two courts under scrutiny. Although it is in some cases possible to distinguish fields similar to those identified in York, the overall picture differs markedly. The *Parlement*, like the Consistory Court, contained a large – and growing – group of university-trained lawyers. It thus participated in a linguistic field similar to that of the York case, where legal specialists talked to other specialists about social conflicts, placing them in a particular legal framework to look for a legitimate means to resolve them. Again, the media used shaped the limits of this particular communicative field, as much communication was conducted in judicially moulded Latin texts. The criminal register from 1345 contains an *arrêt* in a case initiated by Isabelle de Blanot, lady of Uxelles, following the attack by several armed men on the village of Ougy-sous-Uxelles, falling within her jurisdiction.<sup>66</sup> The entry is built around the procedural decision that the *Parlement* made, namely to join Isabelle as plaintiff to the royal proctor and thereby extend the scope of the case beyond that of a purely civil suit. The *arrêt* sets out the legal issue, namely that the attackers have possibly breached a royal safeguard by their action against the village, specifies the procedural steps undertaken so far, that is that the court has received and assessed multiple pieces of information (*plures informationes*) concerning the case, and notes its final decision. The information provided is limited to what is relevant for the current legal argument, leaving out such things as the exact outcome of the enquiries or the precise events that have taken place in Ougy. Thus both in its language – that is, juridical Latin – and its rhetorical structure, this entry was targeted at a field of specialized legal discourse. However, the *arrêt* likewise hints at how the *Parlement* engaged in a communicative field beyond that of legal specialists. In the stress it lays on the role of the information received by the court in formulating a decision in the case, this entry

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<sup>65</sup> Cf. Forrest, ‘Trust’ (2016).

<sup>66</sup> AN X<sup>2A</sup>5, fol. 74r. For a full transcription, see Appendix 3.2.

shows how the *Parlement* depended on the interaction with many groups and individuals outside a court context. And, as seen for the Consistory Court, the interaction in this field was bi-directional. The *Parlement* performed its claim to a legitimate definition of justice, be it through the publication of some of its legal documents, as discussed in chapter four, or through the public enactment of parts of its legal process.<sup>67</sup>

Yet the above *arrêt* also nods at a third field of communicative activity with which the *Parlement* was particularly concerned. In the case of Isabelle de Blanot, the main issue at stake was the alleged breach of royal safeguard. Such legal subjects, being concerned with an ideal social order in the realm that was supposed to be guaranteed by the king, engaged the *Parlement* in a communicative field that had a more politico-ideological character. Late medieval French kings claimed power over an increasingly large geographical area, including Normandy, Champagne and the Languedoc.<sup>68</sup> As a major instance of the kings' claim on supreme judicial power, the *Parlement* was thus also strongly involved in its field of politico-ideological language. An example of this can be found in its practice of regularly holding *Grands Jours*, that is parliamentary sessions in other places than the Parisian *Palais de la Cité*.<sup>69</sup> In performing royal justice the *Parlement* not only vied for the social legitimacy of its own position as assessor of social behaviour, but also engaged in the political language of royal power, that is to say it claimed these areas fell within the political constellation of the French kingdom with the king at its head. It thus essentially shared in the many forms by which this royal ideology came to be propagated and challenged, be it architecturally, as in the campaign to visualize the royal presence in Paris by expanding the *Palais de la Cité*, enacted, in the form of Joyous Entries or otherwise.<sup>70</sup>

The Council of Utrecht likewise offers a complex picture of courts' fields of communicative activity. The most striking difference with the other two courts, and in particular with the Consistory Court, is the foreignness of university-schooled lawyers. Professional lawyers from outside were occasionally called upon, but they did not form an intricate part of the judicial body itself. Having received legal training at a university was no formal or informal prerequisite to participating in the curial speech community, as it did in York and Paris. The particularities of these officials' nomination – that is an indirect election by the political community, influenced by oligarchic interests – put up very different criteria for admission to the judiciary. The surviving documents support this view of a

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<sup>67</sup> For the *Parlement's* publication practices, see chapter four. For examples of judicial enactment in Paris, see: Cohen, 'Criminal' (1990); Gauvard, 'Pendre' (1994).

<sup>68</sup> For a general history of the late Capetians, see: Menant, Martin, Merdrignac and Chauvin, *Les Capétiens* (1999) 315-446.

<sup>69</sup> See chapter three for the practice of holding *Grands Jours*.

<sup>70</sup> On the rebuilding of the *Palais de la Cité*, see chapter two. As argued in chapter three, the *Grands Jours* are closely related to various forms of political performance, like the Joyous Entries held by many late medieval rulers.

modest importance attributed to learned legal discourse. From their oldest surviving exemplars at the beginning of the fourteenth century, the Council's many registers are almost exclusively written in (Middle) Dutch. Furthermore, the learned legal categories according to which social reality is often conceptualized in the York and Paris sources, are hardly present in the Utrecht material. For example, the vocabulary applied to distinguish various types of crimes, like *onstantelike saken* (improper things) or *vredebrake* (breach of peace), echoes very specific moral and political ideas rather than a learned taxonomy.<sup>71</sup>

It is, however, still possible to distinguish different fields of communicative activity in which the Council was engaged. Although less defined by a formal training in legal theory, there was an important difference between the court's internal and external speech contexts. This difference becomes particularly clear when comparing the two major written sources surviving for the Council, the *Raads Dagelijks Boek* and the *Buurspraakboek*.<sup>72</sup> The former, constituting a register of the court's daily business, is mainly concerned with matters internal to the Council or otherwise limited to a small group of people involved in a specific case, containing, for example, extensive notes on decisions taken in cases of private debt, marriage and inheritance.<sup>73</sup> It thus formed part of a field of internal speech, seeing a small group of insiders negotiate about the socio-legal truth in a limited case. The *Buurspraakboek*, meanwhile, was involved in a completely different kind of communicative field. As part of the regular *buurspraak* occasions, this register functioned within an explicitly public setting, involving large numbers of local inhabitants. It was part of a field of external speech, where social actors posed their claims and counter-claims on the constitution of Utrecht society. This did not simply encompass the official *buurspraak* occasions, but also the many forms of non-official public speech that formed part of socio-political life in the city. The Council, for example, regularly punished people for causing unrest by publicly uttering wrong words.<sup>74</sup> Although in these cases, the Council painted such public speech acts as illegitimate behaviour, they nevertheless formed part of the same field of public socio-political speech, where claims for truth were publicly uttered and negotiated. What is more, in discrediting others' use of such public forms of speech, the Council was essentially claiming the field's capital of legitimate public speech as its own.<sup>75</sup> Thus, in using specific

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<sup>71</sup> For the category of *onstantelike saken*, see chapter four.

<sup>72</sup> See chapter one and chapter four for more on the *Raads Dagelijks Boek* and *Buurspraakboek*.

<sup>73</sup> Examples abound, like for debt: HUA 701-1.13: *Raads Dagelijks Boek* 1414-1425, fol. 54v (1417), concerning marriage: *Ibid.*, fol. 74r (1418), and concerning inheritance: *Ibid.*, fol. 32r (1416).

<sup>74</sup> See for example: HUA 701-1.16: *Buurspraakboek* 1396-1402, fol. 326v (1401) for 'unreasonable shouting' by night, HUA 701-1.16: *Buurspraakboek* 1405-1409, fol. 100r (1408) for words damaging people's honour, and HUA 701-1.16: *Buurspraakboek* 1414-1418, fol. 118r (1416) on public words directed against the Council.

<sup>75</sup> Cf. Daniel Lord Smail, 'Hatred as a social institution in late medieval society', *Speculum. A journal of medieval studies* 76 (2001) 90-126; *idem.*, *Consumption* (2003); Jan Dumolyn, "'Criers and shouters.'" The discourse on radical urban rebels in late medieval Flanders, *Journal of social history* 42 (2008) 111-137; Deen, *Publiek debat* (2014).

media in particular settings, various social actors, including the Council, participated in a particular field of communicative action, while at the same time negotiating their own position in as well as the boundaries of the field itself.

### **Interaction and mediation between fields**

The communicative fields sketched above are strongly simplified conceptions of social practice. Where the previous analysis has shown the variety of communicative structures between the three cases – and thus the limited applicability of one single model to all three –, in what follows I will complicate the picture in another way. For despite the differences between the constellations of communicative fields on which these courts operated, in all three cases there was a strong correspondence between the ways in which separate fields overlapped and interacted with each other.

Such interaction could take the form of linguistic mediators, that is individuals positioned at certain crucial points between speech fields and able to convert the linguistic capital of the one into that of the other. Proctors and advocates are the prime example here. Both in the Consistory Court and the *Parlement* these men played an important role in the interaction between the court and its litigants. Advocates generally took the role of legal advisors, while proctors were essentially legal representatives of one of the parties.<sup>76</sup> They thus formed, each in their own way, a link between legal and extra-legal linguistic fields. Advocates would develop legal arguments and plead these before the courts, thereby navigating the troubled waters of legal speech and argument for their clients. Proctors, in their turn, could increase the accessibility of the court geographically and financially, by allowing litigants who lived far away from the court to be represented without the costs and trouble of a personal appearance at every session. At the same time, proctors and advocates could also function as gatekeepers to the legal field by assessing whether a case brought before them would be legally tenable. Numerous surviving oaths of admission echo this gatekeeping ideal by their stipulation that proctors and advocates ought to refuse or abandon cases they think to be flawed, hopeless or otherwise untenable from a legal point of view.<sup>77</sup> They were thus the first to determine the possibility or impossibility of translation between the legal and extra-legal communicative fields. The role of proctors as legal intermediaries had its limits in various courts. The *Parlement* often required plaintiffs to acquire a special letter of approval before they could appoint a proctor to plead

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<sup>76</sup> See chapter one and chapter three. Aubert, *Histoire* (1894) 205-228; Aubert, 'Nouvelles recherches', pt.1 (1916) 282-286; Helmholz, *Marriage litigation* (1974) 147-154; Brundage, *Medieval origins* (2008) 344-370. However, Helmholz also shows how the roles of advocates and proctors could overlap in some courts: Helmholz, *Marriage litigation* (1974) 150.

<sup>77</sup> Laurière (ed.), *Ordonnances*, vol.1 (1723) 300; Wilkins (ed.), *Consilia*, vol.2 (1737) 410; Aubert, *Histoire* (1894) 220; Brundage, *Medieval origins* (2008) 295-305.

in their stead.<sup>78</sup> And various church courts incentivised litigants to appear in person during the first and last session of a case.<sup>79</sup> But such limits show that courts were conscious of the crucial role these speech intermediaries played in managing the boundaries between linguistic fields. This could be facilitated through individuals, but an overreliance on their mediating role could also have the adverse effect of completely estranging both linguistic fields from each other, by separating litigants too strongly from what was actually going on in court.

Advocates and proctors are not as visible in the sources from Utrecht, although there is occasional evidence for their presence both in the Council's books of bylaws and in the aldermen's register.<sup>80</sup> Another type of intermediary, however, took center stage in the communicative process in Utrecht. The functionaries called *stadsknappen* formed the most important officials employed to facilitate the day-to-day functioning of the Council. Their roles included such diverse tasks as guarding the entrance to the council room and arresting contumacious individuals. But their main job consisted of summoning the parties in a case and bringing messages to and from the Council.<sup>81</sup> They thus functioned as crucial mediators between the internal speech arena of the council room and the world outside, be it in a much more practical sense than the proctors and advocates. This role of communicative intermediaries was far from unique for Utrecht. Both the *Parlement* and the Consistory Court employed similar functionaries, who put flesh on the flow of information between the internal speech world of the court, and the external parties interacting with it. The intermediary role that the *Parlement's huissiers* played has already come to the fore in considering the spatial practices in the *Palais de la Cité*.<sup>82</sup> Yet their activities extended far beyond the courtroom itself. In the documents from the *Parlement* they are seen to be tasked with many operational matters: summoning litigants, confiscating property, overseeing the payment of debts and bringing letters and arrests to and from the *Parlement*.<sup>83</sup> Evidence for the precise activities of the apparitors or summoners of the Consistory Court is less prominent. But the focus of their tasks on the summoning of litigants and the reporting of its results back to the court was again concerned with the communication between two speech fields.<sup>84</sup>

Both within and beyond the courtroom, functionaries like the *stadsknappen*, the *huissiers* and the apparitors facilitated the interaction between a restricted world of legal technicalities and a world

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<sup>78</sup> Aubert, 'Nouvelles recherches', pt.1 (1916) 282-284.

<sup>79</sup> Helmholz, *Marriage litigation* (1974) 124.

<sup>80</sup> Muller (ed.), *Rechtsbronnen*, vol.1 (1883) 190; *ibid.*, vol.2 (1883) 50. Both refer to lawyers' role in the aldermen's legal process.

<sup>81</sup> Muller (ed.), *Rechtsbronnen*, Introduction (1885) 210, n.2; Muller (ed.), *Rechtsbronnen*, vol.1 (1883) 203-204.

<sup>82</sup> See chapter two.

<sup>83</sup> For an extensive overview of these tasks, see: Félix Aubert, 'Les huissiers du parlement de Paris, 1300-1420', in: *Bibliothèque de l'école des chartes*, vol.47 (1886) 370-393, esp. 377-381.

<sup>84</sup> Burns, *Medieval courts* (1962) 152-153.

outside where such technicalities were to be translated into communicative practice. At the same time, it was through their functioning, and its limits, that the courts in fact emphasized the boundaries between the various speech fields concerned. Both the *stadsknapen* in Utrecht and the Parisian *huissiers*, for example, had only limited accessibility to the court room. The late fourteenth century *Liber hirsutus minor* forbade those *stadsknapen* charged with guarding the entrance to the council room, to enter the same room unless explicitly called for. Instead it ordered them to remain 'between the two doors', suggesting the existence of a kind of lobby outside the courtroom.<sup>85</sup> Likewise, at least since the royal ordinance of 27 January 1360, the *huissiers* were not allowed to enter the *Grand chambre* during council sessions.<sup>86</sup> At the same time, as seen in chapter two, their role in audience sessions was deemed very important. As one entry in the X<sup>1a</sup> registers shows, they could even be formally reprimanded if they failed to deliver on this front.<sup>87</sup> A line was thus drawn in the operation of these communicative intermediaries between where mediation was desirable and where it was not. By suggesting the necessity of intermediaries in certain cases, the courts not only tried to facilitate interaction between linguistic fields, but also carried out these fields' separation.

Next to specific mediators, particular speech situations could also form a link between the various linguistic fields in which courts were engaged. Such occasions were often connected to the gathering or spreading of information. The taking of witness testimony, for example, saw a strong reliance – one might even say dependence – of the court on the interaction between speech fields.<sup>88</sup> All three courts knew these kinds of communicative occasions, although their visibility in the surviving records differs significantly. Chapter four has shown that depositions form a major part of the surviving cause papers from York's Consistory Court. In the elaborate process of drafting the depositions, the experience and information of social informants was reworked within a learned legal framework, thus facilitating the interaction between both types of speech.<sup>89</sup> Although less visible in the court records, in Utrecht the procedure of taking witness statements entailed a similar linking of diverse linguistic fields. Time and again, the *Liber albus* noted how transgressions of many of the city's bylaws could only be proven through the testimony of two 'honest persons' (*reckeliken luden*). Only if this turned out to be impossible, the alleged transgressor was sometimes given the option of proving his innocence by taking an oath, thus emphasizing the importance attributed to linking diverse speech fields in legal practice.<sup>90</sup> The role of testimony in connecting speech fields becomes even more explicit in one specific type of procedure, noted both in the *Liber albus* and the *Roede*

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<sup>85</sup> Muller (ed.), *Rechtsbronnen*, vol.1 (1883) 73-74.

<sup>86</sup> Aubert, 'Huissiers' (1886) 377.

<sup>87</sup> AN X<sup>1A</sup>1473, fol. 202v (1386). Also published in: Aubert, 'Huissiers' (1886) 385.

<sup>88</sup> Also see: Forrest, 'Trust', for an example of the crucial role of social informants for late medieval episcopal administrations.

<sup>89</sup> See chapter four.

<sup>90</sup> Muller (ed.), *Rechtsbronnen*, vol.1 (1883) 6-11, 15.

*boeck*. Through this procedure, the defendant in a case brought before an ecclesiastical court could force the plaintiff to have the case adjudicated by the Council instead. The *Roede boeck* in particular details the way in which the Council proceeded in such cases. Mirroring the procedure in York, the Council would examine witnesses on a number of specific topics, partly determined by the defendant in the case. What is more, the officer in charge of the examinations would then subject these testimonies to the scrutiny of ‘masters and jurists’ to determine their legal implications, and present their assessment to the Council.<sup>91</sup> In this procedure, the court actively and explicitly tried to connect three separate linguistic fields: that of its social informants, that of the legally schooled specialists, and its own internal linguistic context.

For the *Parlement* of Paris the extensive procedure of *enquêtes* constitutes one of the most concrete forms of overlap between several speech contexts. The exact nature of the inquiries undertaken by the *Parlement*’s officials could vary widely, but the hearing of witnesses played a major part in many of them. As was the case in York, in accusatory cases, witnesses – usually summoned by the parties involved – would come in court to respond to a set of statements drawn up on the basis of the points of disagreement between both parties.<sup>92</sup> Several forms of social information also played an important part in *ex officio* cases. The interrogations of *Châtelet* prisoners at the end of the X<sup>2A</sup>4 register suggest, for example, how proving culprits’ crimes depended not only on their own confessions, but also on information brought directly by witnesses or through inquiries by local authorities.<sup>93</sup> In other parts of the criminal registers the role of social information in the judicial process is also evident. An ordinance from 1349 concerning a case from the bailiwick of Auvergne gives some insight into the process of hearing witness testimony. In it the *Parlement* ordered the former bailiff of Auvergne to facilitate the interrogation of witnesses in the case, by arranging the oaths they were to take, paying for the verification of the testimony, and having it sent to the court on a specific day.<sup>94</sup> In another ordinance, this time from 1339, the *Parlement* ordered the bailiff of Vermandois to make an enquiry into the *fama publica* of a certain Thomas Maigret and his accomplices.<sup>95</sup> Thus both the gathering of individual testimony and the more general ‘word on the street’ formed an intricate part of the *enquête* process, linking different fields of communicative activity together.

The media that were used by and in relation to the courts – be they oral, textual, enacted or otherwise – operated in constellations of multiple and partly overlapping linguistic fields in which

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<sup>91</sup> Ibid. 65-66, 168. On the practice of bringing an ecclesiastical ‘libel’ before the Council, see Muller (ed.), *Rechtsbronnen*, Introduction (1885) 98-100.

<sup>92</sup> On the procedure of *enquêtes* see: Aubert, *Histoire* (1894) 79-123, and in particular 100-110 on the role of testimony therein.

<sup>93</sup> Langlois and Lanhers (eds.), *Confessions* (1971) 17-19.

<sup>94</sup> AN X<sup>2A</sup>5, fol. 171v.

<sup>95</sup> AN X<sup>2A</sup>2, fol. 7r.

these courts were engaged. There they were often used to emphasize the separation of fields, by raising linguistic, conceptual or even physical boundaries between them. Thus, by producing documents in a relatively inaccessible style or language, or by limiting people's access to particular places or sessions, courts stressed the difference between curial and extra-curial speech contexts. Yet in their communicative practice they also actively tried to bridge gaps between fields, either through particular intermediators or on specific speech occasions in the legal process. While advocates, proctors and various court functionaries facilitated communication between the court and its potential litigants and audiences, the interaction between fields was likewise stimulated on occasions like sentence readings and during the taking of testimony. In line with what the first part of this chapter has suggested, courts, in their interaction with the law's consumers, thus showed a tension between the professed detachment from and the practical involvement in society. Consequently, they used the media at their disposal not only to navigate between linguistic fields, but also to try and define the fields, that is to script the way in which participants acted, spoke and interpreted the things said and done in particular speech contexts. By suggesting which forms of communication belonged to a particular field and which fell outside of it – for example because they needed translation into a different form – the courts claimed specific types of speech to be legitimate in certain communicative contexts, while others were not. In attempting to define the boundaries of the linguistic fields in which they took part, the courts were thus involved in a negotiation over the capital of these fields, that is over the nature of legitimate speech in each of them, as well as their own and others' possession of this capital.

### **The legal process as socio-legal narrative**

In their attempts to define the nature and relative possession of socio-linguistic capital in different communicative fields, the courts under study not only tried to influence concrete communicative practice, but also propagated specific socio-legal narratives. These narratives were essentially conglomerates of truth claims, which were linked together by strands of common logic. They encompassed claims on the essential ordering of society, the potential threats to this order, as well as the role of the court in safeguarding it. While reflecting institutional ideals about the world, such narratives were at the same time constructed to influence it. They formed, like the communicative practices treated above, part of the attempt to gather socio-linguistic capital in the form of legitimate judicial speech. Through propagating specific socio-legal narratives, courts tried to become a logical and inevitable part of the late medieval legal landscape. Chapter four has shown the discursive strategies used in the production of legal documents to incorporate separate social events into these narratives. In what follows, the conglomerates of truth claims themselves will take centre stage. By reviewing some of the central elements of the narratives found in York, Utrecht and Paris, I will show

how all three courts, despite constructing their narratives differently, expressed similar concerns, thus suggesting a broader court-related development in the propagation of late-medieval socio-legal narratives.

At the basis of many forms of judicial practice and logic lies the conception of ordering a potentially disordered society.<sup>96</sup> However, what ‘disorder’ – and for that matter ‘order’ – exactly entails differs from case to case, and is subject to linguistic claims. In her *“De grace especial”*, Claude Gauvard studies the discourse on criminality in the sources of the *Parlement* of Paris. Her analysis of its late fourteenth- and fifteenth-century registers and other procedural documents suggests that these sources often resist classifying the acts treated in a case according to modern categories of crimes. Instead they describe and moralize the criminal event and characterize the offender. Acts are said to be *scelus* (sinful) or *mala* (bad), while the offender is portrayed as a socially and morally transgressive individual. The definition of crimes in these judicial sources is thus primarily concerned with the perturbation of an assumed social and moral order.<sup>97</sup> Such ideas on the nature of crime were not isolated. They formed part of a broader conception of society as encompassing both social and moral aspects, that is to say forming both a worldly and religious community. The ideal community, furthermore, was given geographical shape in the French kingdom, with a king at its head as guarantor of the political, social and religious order.<sup>98</sup> A clear example of this relation between social and political order are the many legal cases concerned with the breach of royal safeguard.<sup>99</sup> In such cases, like that of Isabelle de Blanot treated above, otherwise private conflicts were provided with a particular public significance. The men attacking a village within Isabelle’s jurisdiction were not just causing unrest in one community, they were transgressing a socio-political order guaranteed by the king. In line with the expanding territorial and centralizing ambitions of the French kings, the *Parlement* defined social order and disorder in relation to a political ideology that presented the French kingdom as a natural, logical and sacred unity.

A similar link between narratives of social and political order in Utrecht emerges from the description of forgiveness rituals as commonly recorded in the *Buurspraakboek*. In 1385, the Council punished Hughe de Kraen and his son Aernt for killing a man within the city. The entry relating this event reveals many of the broader ideological claims posed in such cases:

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<sup>96</sup> Cf. Smith, *Punishment* (2008) 13.

<sup>97</sup> Gauvard, *‘Grace especial’* (1991) 111-143.

<sup>98</sup> *Ibid.* 789-847.

<sup>99</sup> A survey of the criminal registers X<sup>2A</sup>2-5, as analysed in: Labat-Poussin, Langlois and Lanhers (eds.), *Actes* (1987), results in 184 entries concerned with breaches of the royal safeguard for the period 1330-1350, making it one of the most frequently appearing types of crime in these registers.

Because Hughe de Kraen and Aernt son of Hughen have killed a man within the city, without bringing charges [against him] to the Council, they have lain in the tower and have come here to the clock in shirt and pants and ask the Council forgiveness and give the city 60,000 stones in compensation.<sup>100</sup>

Reconstructing the legal and penal logic of this account, we notice an apparent dichotomy between the subject of the crime and the entity or entities receiving redress for the murder. While the unnamed victim may well have had relatives or friends who could be eligible for redress, this entry speaks only of a compensation to the city and reconciliation with the Council. It thus presents the city and its governing council as the main victims of the crime. Contrary to such entries in the *Buurspraakboek*, the various bylaws relating to manslaughter often do stress the obligation of the convict to reconcile with the relatives of the deceased.<sup>101</sup> Describing the event in such a way thus constitutes a conscious choice to emphasize those aspects of the crime that are deemed important in the situation. And that situation was the public gathering of citizens at a *buurspraak*. Like the *Parlement*, the Council propagated a specific idea about who or what was damaged by a criminal act. The heinous acts of individuals brought the urban community and its representative, the Council, in disarray. It was thus these entities, according to the *Buurspraakboek*, that were to be compensated by the offenders. This reasoning was also in line with the call on all citizens to keep the ‘peace of our citizens’ (*vrede van onsen borgeren*), that was proclaimed several times a year.<sup>102</sup> The idea of a semi-permanent peaceful state of affairs between all citizens of Utrecht, formed the ideological basis for the judicial system of which the Council formed the main proponent.<sup>103</sup> Where the *Parlement* took the political ideal of the French kingdom as its point of departure, the socio-legal narrative professed by the Council was based on the idea of the city of Utrecht as peaceful communal body endangered by transgressive behaviour.

The Consistory Court, being primarily concerned with accusatory cases, was less explicit in presenting its ideal of an orderly society. Nevertheless, traces of such ideas do survive in the available sources. Considering again, for example, the court statutes drawn up in 1311 by archbishop Greenfield, we notice how the broader aim of the document was predicated upon the needs of society. The statutes, which were supposed to be read publicly in court twice a year, formed the

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<sup>100</sup> HUA 701-1.16: *Buurspraakboek* 1385-1391, fol. 16v: ‘Want hughe de kraen ende aernt hughen zoen enen man binnen der stat doot gheslegghen hebben onvervolcht vanden Rade daer omme hebben zi ghelegghen inden toorn ende zijn hier ghecomen in hemde ende in broeke ter kloeken ende bidden den rade verghifnisse ende gheven der Stat tebeteringhe Ix<sup>M</sup> steens’.

<sup>101</sup> HUA 701-1.227: *Th.2 register*, fol. 69v; Muller (ed.), *Rechtsbronnen*, vol.1 (1883), 100, 161.

<sup>102</sup> See for example: HUA 701-1.16: *Buurspraakboek* 1414-1418, fol. 81r (1415).

<sup>103</sup> Muller (ed.), *Rechtsbronnen*, Introduction (1885) 46-49.

ideological basis for the existence of the archiepiscopal courts.<sup>104</sup> In the prologue, the archbishop notes the importance of regulating the court of York, 'to which our subjects flow together from everywhere, from the city, the diocese and the province, in order to obtain fair justice in their causes and disputes.'<sup>105</sup> The statutes image the archiepiscopal subjects as being in dire need of someone or something to provide a fair solution to their mutual disagreements. The society thus presented is again one threatened by disorder. In this case, however, the threat comes not from transgressive individuals, but from disputes between ordinary individuals. Such disputes, judging by the statutes, appear to be rife, requiring an impartial – maybe even superhuman – arbiter. The images of society presented by the various courts differ in the specific characterization of what constitutes social order as well as the potential threats to this order. But the general sense one gets from these – often implicit – social characterizations, is that of a society full of challenges, to which the court in question may just be the best solution. In short, while the nature and scope of the concerned community varied between the narratives of the three courts, from the inhabitants of a kingdom to those of one town, the concept of a potentially threatened social order in need of safeguarding returns in all of them.

Late medieval law courts coexisted with other socio-legal stakeholders in their communities. These could include formal legal authorities and their representatives, but also many alternative forms of dispute settlement. Law courts in general began to form an important constitutive factor of the late medieval legal landscape, and several of them played a part in each of the cases studied here. At the same time feuding and other socio-legal practices that took kinship or patronage structures as their main point of reference, were also omnipresent. There were, in short, alternative solutions available to quell the threat of social disorder that the law courts signalled, and to which they had to relate themselves. In the narratives presented by the three courts, such alternatives therefore received ample attention.

Evidence for a concern with feuding practices and other forms of private justice can be found in all three cases. In Utrecht we have seen how the idea of a threatened urban peace formed a central legitimization for the political and jurisdictional state of affairs. In day-to-day practice, however, this general urban peace knew a more specific manifestation. In cases where two or more citizens got involved in a dispute, the urban authorities could demand a temporary peace from the fighting parties, their relatives and friends. Refusal or transgression of this case-specific peace could result in

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<sup>104</sup> Burns, *Medieval courts* (1962) 113-114.

<sup>105</sup> Wilkins (ed.), *Consilia* (1737) 409: '*...ut in curia nostra Eborum, ad quam undique confluunt subditi nostrarum civitatis, diocesis, et provinciae, pro justitia in suis causis et negotiis fiducialiter obtinenda, ...*'

anything from a monetary fine to corporal punishment.<sup>106</sup> Such measures were concerned with limiting feuds between groups of citizens, which, taking the frequency of these peace demands as a measure, seem to have been common practice. Yet their character, as Muller rightly notes, was hardly an all-out imposition of one system over the other. Rather it tried to integrate the Council within an existing system of socio-legal practice, by claiming supervision over practices of appeasement between parties.<sup>107</sup> In the above account of the punishment of Hughe and Aernt de Kraen for manslaughter, the Council specified how the two men were convicted for killing a man ‘without bringing charges [against him] to the Council’ (*onvervolcht van den Rade*).<sup>108</sup> The same wording returns in one of the regulations in the *Liber Albus*:

Any citizen living in our city, who hits any man in relation to a feud that he pursues against him without bringing charges [against him] to the city council, will forfeit three pounds.<sup>109</sup>

What is presented as problematic – and therefore eligible for punishment – in these cases is not so much the feuding practice itself, but the non-involvement of the Council in these conflicts. These rules and accounts show an authority trying to assert its own position within existing means of conflict resolution. This is also how one can interpret the wording of the regulations in the books of bylaws through which the Council tried to appease the parties in a conflict. Instead of simply ordering an end to the conflict, it demanded (*eyschen*) peace from both parties. In addition, a system of fines was put in place that would penalize a party that refused to give this peace once, twice, or even three times.<sup>110</sup> Refusal by one – or both – of the parties was thus considered a real possibility. Again, what may seem at first like a forceful measure to control private vengeance, can rather be read as an attempt by the urban authorities to tap into and assert its own role within existing discourses of socio-legal practice.<sup>111</sup>

That courts did not simply replace existing forms of socio-legal practice is also clear in the case of the *Parlement*. In Paris, various forms of conflict resolution and socio-legal reasoning existed next to

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<sup>106</sup> Muller (ed.), *Rechtsbronnen*, vol.1 (1883) 43-46.

<sup>107</sup> Muller (ed.), *Rechtsbronnen*, Introduction (1885) 49-52.

<sup>108</sup> The translation of the term *onvervolcht* is slightly ambiguous, as the *Middelnederlandsch Woordenboek* (searchable through: <http://gtb.inl.nl>) attests, appearing both in a legal context as actions taken outside of a judicial procedure and in the more general sense of ‘without foreknowledge’. Given the legal issues at stake in these cases, I have chosen here to follow the first meaning,

<sup>109</sup> Muller (ed.), *Rechtsbronnen*, vol.1 (1883) 28: ‘*Waer enich onser borgher of de in onser stat woenachtich is, de enighen man sloeghe om enighe vete, de hi te voeren op hem hadde onvervolghet den raet vander stat, verboerde drie pont.*’

<sup>110</sup> *Ibid.* 44.

<sup>111</sup> Cf. Corien Glaudemans, *Om die wrake wille. Eigenrichting, veten en verzoening in laat-middeleeuws Holland en Zeeland* (Hilversum, 2004), esp. 66-115, who traces similar concerns with practices of feuding and private vengeance for the late medieval law courts of Holland and Zeeland.

and often even in tandem with the court's legal procedure, including such practices as trial by ordeal and judicial duelling.<sup>112</sup> On a more fundamental level, however, the *Parlement* was also involved in a broader economy of honour, a socio-legal rationale in terms of which people conceptualized many of the conflicts between individuals and groups.<sup>113</sup> This rationale of honour – understood both on a personal and kinship level – formed the basis for an extensive system of private vengeance, within which social standing was publicly negotiated according to unwritten rules. Such rules provided a framework to limit uncontrolled violent excesses between conflicting parties and achieve a truce or peace, often mediated by these parties' kin-groups.<sup>114</sup> The case of the attack on Guiart de Noireterre, considered in chapter four, provides a glimpse of the court's concerns with these extra-curial practices and ways of reasoning.<sup>115</sup> In the statement that Guiart himself made on his deathbed, he told the court that he believed Jean de la Fôret and his esquire Pierre le Viconte to have organized the attack against him:

Both on account of [his] cousin, called Jehan de Noireterre, who pleaded against said knight [Jean de la Fôret] in an appeal case, which [Guiart] supported, and because said Pierre le Viconte had challenged [Guiart] to a judicial duel for reasons of his master.<sup>116</sup>

Although providing little detailed information on the exact motivations for the conflict between Guiart and his attackers, this statement – supposedly essentialized from Guiart's own words, given its formalized structure – does clearly show the intertwinement of curial and extra-curial forms of dispute resolution. According to this entry, the conflict was fought out in multiple arenas, from a curial appeal procedure to a judicial duel and even in an outright attack on the streets of Paris. By presenting Guiart's suggestion of causality in this way, the *Parlement* thus acknowledged the existence of such extra-curial solutions to a conflict.

That is not to say, however, that the court unquestioningly accepted all alternatives to its own practices of dispute resolution. As the Noireterre case shows, the *Parlement* explicitly condemned this extra-curial attack, sentencing both conspirators and assassins to death. Yet in many cases, the court's approach of such alternatives was subtler. Judicial duels, for example, while formally abolished by Louis IX in 1260, still appeared on a regular basis in the fourteenth-century registers of

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<sup>112</sup> Gauvard, *Grace especial* (1991) 172-189.

<sup>113</sup> *Ibid.* 734-752.

<sup>114</sup> *Ibid.* 753-779.

<sup>115</sup> See chapter four; Langlois and Lanhers, *Confessions* (1971) 51-75.

<sup>116</sup> Langlois and Lanhers, *Confessions* (1971) 52-53: '*... tant parce que le cousin germain de lui qui parle, qui est appelé Jehan de Noireterre, qui plaidoit contre ledit chevalier en cause d'appel, et lequel il qui parle soustenoit, comme pour ce que ledit Pierre le Viconte avoit appelé de lui qui parle de gage de bataille pour raison de son maistre.*'

the *Parlement*, where they were treated as a legitimate option to solve a conflict.<sup>117</sup> For example, in a case from 1338, Jean Le Charlier appealed to the *Parlement* after the provost of Laon had decided not to grant him the right to a duel with Guillaume Rouvel.<sup>118</sup> While the court did not explicitly approve of Jean's wish for a judicial duel, by treating his appeal as a legitimate legal action, it implicitly accepted the duel as practice for solving disputes. Rather than forcefully replacing alternative socio-legal rationales with a logic of court-centred litigation or criminalization, the *Parlement* attempted to claim its own role within them. To this end, it used means similar to those of the Council of Utrecht. Parties involved in a conflict had the option of acquiring a formal guarantee (*asseurement*) of peace between them from the *Parlement*. Guarantees were sometimes requested by only one of the parties, in which case the other side would be urged to comply as well.<sup>119</sup> This was also often the case in litigation concerning requests for judicial duels. Although the request to hold such a duel is accepted as legitimate action, in most of such cases the court tried to push for a court-guided solution to the conflict, through appointing mediators.<sup>120</sup> As in the case of Utrecht, the *Parlement* thus sought to enter into existing systems of dispute resolution, by taking over a specific discourse and logic, while claiming its own role within the process as such.

Next to these informal or semi-formal systems of dispute resolution, other law courts – most of them also of fairly recent date – formed important entities to which the courts under scrutiny had to relate themselves. These relations and the courts' discursive strategies in them become particularly clear in the case of York's Consistory Court. Despite its position at the summit of the English ecclesiastical court hierarchy, within the context of the kingdom itself the Consistory Court had to situate itself vis-à-vis several other legal entities. Prominent among those were the royal courts. Much has been written about the relation between English ecclesiastical and royal courts. W.R. Jones, for instance, set out the many areas of jurisdiction where the crown and ecclesiastical courts confronted each other, including topics as diverse as ecclesiastical benefices, debts and excommunication.<sup>121</sup> Although both spheres generally accepted each other's spheres of competence, Jones' argued that in cases of conflict the royal courts held the upper hand. Their main instrument in this was the so-called writ of prohibition, a writ that litigants in the church courts could request from the king to halt a case, as it was said to belong to the royal jurisdiction.<sup>122</sup> Thus by offering litigants

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<sup>117</sup> Cf. Gauvard, 'Grace especial' (1991) 173-179. For the legislation of Louis IX on judicial duels, see: P. Guilhaume, 'Saint Louis, les gages de bataille et la procédure civile', *Bibliothèque de l'école des chartes* 48.1 (1887) 111-120.

<sup>118</sup> See: AN X<sup>2A</sup>2, fol.1.

<sup>119</sup> Gauvard, 'Grace especial' (1991) 779-788.

<sup>120</sup> For example X<sup>2A</sup>5, fol. 1v. (1345), where Savrai de Vivonne, lord of Thors is appointed as mediator in a conflict in which a judicial duel has been requested.

<sup>121</sup> Jones, 'Relations' (1970) 100-101.

<sup>122</sup> *Ibid.* 80-87.

the possibility to strategically adapt a case's legal definition, the royal court indirectly tried to extend its legal authority.

Richard Helmholz finds the same kinds of discursive strategies, although he questions the alleged royal dominance in using them. Instead, he stresses how the church courts had procedural 'weapons of their own', to discourage litigants – and through them the royal courts – from trying to take cases away from persecution in an ecclesiastical court.<sup>123</sup> Jones and Helmholz, while disagreeing on the relative position of royal and ecclesiastical courts in jurisdictional disputes, both present a very similar picture of the way in which they negotiated this power. First, the struggle for jurisdictional supremacy was fought indirectly by trying to influence the actions of litigants in pursuing their cases, rather than through outright coercion of the latter. Secondly, it was primarily a semantic struggle, that is to say a negotiation over the definition of actions according to specific legal categories. A case of debt, for example, could very well be claimed to concern a case of breach of faith, and thus be eligible to pursue in an ecclesiastical court.<sup>124</sup> The Consistory Court and other curial stakeholders used a subtle strategy of legal semantics to negotiate their own place vis-à-vis each other. Both in their relations towards other tribunals and towards the many non-curial forms of socio-legal logic and practice, courts did not – and probably could not – simply impose themselves on an existing field of potential solutions for social disorder. Instead they tried to tap into existing systems of legal practice and rationale, manipulating both actions and semantic categories in order to legitimize their own position vis-à-vis these other potential solutions.

As courts acknowledged the existence and even legitimacy of alternative solutions to potential social disorder, they were faced with the need to define themselves and the legitimacy of their role in quelling disarray. In order to do so, the socio-legal narratives propagated by them, engaged implicitly or explicitly with the question as to the source of their legitimacy as guardians of social order. As seen for the other discursive building blocks of this narrative, that is these courts' definitions of social order and disorder, as well as the mechanisms to guarantee the latter, the conceptualization of their own role in this story and the font of justice on which they allegedly based it, differed from case to case. Yet a basic concern with such topics of institutional legitimacy occupied all three courts, as their documentary sources attest.

Between the thirteenth and fifteenth centuries, the *Parlement* of Paris developed from a small advisory committee to the French kings to an immense bureaucratic institution, consisting of numerous subdivisions and involved in legal proceedings all over the French kingdom. At the same time, the kings had spatially detached themselves from their supreme court of law, hardly ever

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<sup>123</sup> Helmholz, 'Writs' (1976) 87-90.

<sup>124</sup> Jones, 'Relations' (1970) 165-169.

staying at the *Palais de la cité* anymore from the early fifteenth century onwards.<sup>125</sup> Consequently, they had also become less directly involved in the daily affairs of the *Parlement*. Yet narratively the king still played a very central role as font of legal power. The many royal letters included in the *Parlement's* registers from early on are a marked example.<sup>126</sup> By copying documents that were explicitly drawn up in name of the king, the court textually confirmed the latter's symbolic role in the legal process. And the symbolic legitimacy provided by the person of the king took other shapes as well, as in the inclusion of a royal throne, the *lit de justice*, in the *Grande Chambre*, physically emphasizing the role of the king in the legal process even in his absence.<sup>127</sup> However, one of the most prominent forms in which the king appeared in the *Parlement's* legal procedure, is as a focal point in the definition of various crimes. Gauvard notes how in the late fourteenth- and early fifteenth-century remission letters, several crimes are distinguished as being particularly serious. Among them were those acts that involved threatening the socio-political order of the realm, and could thus be styled public crimes. These crimes, Gauvard argues, were semantically related to the body and honour of the king. So whereas rape, violence and defamation would compromise the bodily integrity and reputation of an individual, acts like *lèse-majesté*, rebellion and warfare could be considered as infringements of the royal body and honour, and therefore as fundamentally threatening the integrity of the realm.<sup>128</sup> The many cases involving breach of royal safeguard, like that of Isabelle de Blanot above, clearly show this discursive link between the royal persona and the ideal political unity of the French realm. By violently entering land under royal safeguard, the attackers are argued to have transgressed against the king himself, thus turning the event into an act of public criminality liable to be judged by the *Parlement*. In short, despite the minor involvement of the French kings in the day-to-day business of the *Parlement*, their role as legitimizers of the court was nonetheless emphasized in the latter's socio-legal narrative as propagated on many occasions.

From a medieval theological viewpoint true judgement could only come from God, while human judges were at best its earthly delegates. For the ecclesiastical courts in particular this matter played an important part in their legitimization as legal authorities. As the York statutes of archbishop Greenfield stressed, fallible men were a problematic entity to trust with fair judgement all by themselves. At the same time, the court itself consisted of just such fallible men. In this context, there was thus a need both to emphasize the non-fallible, almost superhuman character of the court,

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<sup>125</sup> Jean Guerout, 'Le palais de la cité à Paris des origines à 1417. Essai topographique et archéologique. Troisième et dernier article', in: *Mémoires de la fédération des sociétés historiques et archéologiques de Paris et de l'Île-de-France*, vol. 3 (1951) 7-101, at 29-30.

<sup>126</sup> See chapter four for more on the *Lettres* sections in the *Parlement's* registers.

<sup>127</sup> See chapter two; Cf. Brown and Famiglietti, *Lit de justice* (1994).

<sup>128</sup> Gauvard, 'Grace especial' (1991) 832-847. The same was true for attacks on royal officials, whose honour was explicitly with that of the king. See: Telliez, *Officiers* (2005) 419-424. Cf. Ernst H. Kantorowicz, *The king's two bodies. A study in medieval political theology* (Princeton, 1957), for the theological basis of such ideas.

and to legitimately include the activities of fallible men into its daily operation. Attempts at achieving the first can be found both explicitly and implicitly throughout the Consistory Court's written documentation. As noted in chapter three, the surviving sentences in the York cause papers are very formulaic, and provide little information on the actual cases. Most of their contents are instead devoted to a detailed description of the procedural steps leading to the final sentence. I have argued how this focus on procedure functioned in ritualizing court procedure, by linking it to a broader idealized structure of practices.<sup>129</sup> Integrated in the broader court narrative of order versus disorder, however, these oft-repeated formulae also emphasized the superhuman character of the legal process itself. Rather than expounding on the individual motivations for judges and lawyers in taking certain actions, the legal process was presented as impersonal. These sentences thus emphasized above all the absence of human agency, thereby focusing on an allegedly non-fallible procedural structure as intermediary between God and men. At the same time, as Ian Forrest has shown, following the growth of ecclesiastical administrations after 1100, fundamental aspects of the legal process, like testimony or judgement, came to rely on the integrity of an increasingly large network of potentially fallible individuals. In order to counter the problem of relying on less than certain – that is to say non-divine – information, clerics and laymen alike began to use a language of belief in their dealings within this system, putting 'faith' in the words heard from others. Fallible men were deified, in the sense that – for practical considerations at least – their words were considered as reliable as God's own.<sup>130</sup> Thus, both by dehumanizing the legal process and deifying the activities of otherwise fallible men, ecclesiastical courts tried to legitimize their position as guardians of social order.

In the manslaughter case of Hughe and Aernt de Kraen the Council situated itself as the main representative of the urban community, explicitly receiving the moral compensation for a transgression of the social order in general. This idea, however, need not be self-evident, but was rather based upon a long-developed narrative of the Council's legitimacy. As an elected body, much of the Council's legitimization was initially focused on the city's political structure, based as it was around the guilds and their representatives. Looking, for example, at the way in which newly instituted regulations are described we notice how these are often presented as being decided upon in tandem with the general assembly (*morghensprake*) of all the guilds or with their representatives, the *oudermannen*. So it is that a decision on the sale of the wine tax in 1342 is described as being agreed upon 'with the old Council and the new and in the general assembly of all guilds'.<sup>131</sup> Such oft-repeated explicit legitimization of new regulations shows us a concern for the suggestion of (semi-)

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<sup>129</sup> See chapter three.

<sup>130</sup> Forrest, 'Trust' (2016).

<sup>131</sup> Muller (ed.), *Rechtsbronnen*, vol.1 (1883) 36-37: '...mitten ouden rade ende mitten nywe ende bi ghemeenre *morghensprake van allen ghilden...*'.

democratic decision-making, directly involving the relevant elective bodies in the city. Over time, however, the Council appears to have regarded this explicit legitimization through the city's elective institutions as less of a necessity. In the later books of bylaws, mention of the *morghensprake* and the guild representatives becomes infrequent. For example, in a measure taken in 1410 to limit freeloaders abusing the city's right of citizenship, the measure is said to have been taken by the old and new Council, 'for the benefit of our city'.<sup>132</sup> It is as if the position of the Council as the community's problem-solver has become self-evident. And this is the same message as propagated in the many different entries in the *Buurspraakboek*. The link between Council and urban community, though at first explicated through the guild-based elective system, has come to form the Council's legitimization by itself.

Despite the very different ways in which all three courts characterized their society as well as their own position within it, there are several common elements in the socio-legal narratives they promoted. In each case some concept of an ordered society is present, as well as the potential threats it faced. Thus while the *Parlement* presented the ideal political unity of the French kingdom as a social and moral community in danger of being thrown in disarray, the Council of Utrecht attached a similar socio-moral connotation to its city, and the York archbishops presented their subjects' alleged lack of 'fair justice' in disputes as primary challenge to be overcome. Subsequently, each court claimed to be a solution to these threats, which was not necessarily a replacement of other forms of socio-legal practices and rationales, but a particularly legitimate and attractive part of the broader socio-legal landscape. In Utrecht, the Council presented itself as an arbiter in disputes, representing the communal interest to limit these struggles' disordering consequences, without denying people's right to pursue satisfaction. The *Parlement* propagated a similar narrative, in which it acknowledged people's need for redress, while putting itself forward as the royally sanctioned intermediate to acquire it. Finally, the Consistory Court stressed the deified, almost extra-human character of its judicial services in an attempt to entice potential litigants to bring their disputes to it, instead of searching for other resolutions. Each court thus tried to market itself to its potential litigants and audiences through the propagation of a normalizing court narrative. In addition to their attempts to influence people's performance and perception of proper communicative practice, the courts negotiated their position in society by presenting a constellation of claims on their and others' role within it.

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<sup>132</sup> Ibid. 260: 'Die raet vander stat out ende nye hebben eendrachtelic overdragen voer nutschap onser stat... '.

### **Producing and consuming justice**

Late medieval law courts were in the business of selling a court-centered model of socio-legal practice and logic. They promoted a way of doing and thinking about justice that was not self-evident to many of the individuals confronted with it. The courts' strategy to engage potential litigants and audiences was twofold. On the one hand, they tried to influence the forms and arenas of socio-legal communication. By suggesting specific definitions for the communicative fields in which they operated, as concerned participants, linguistic norms and media used, the courts attempted to manipulate people's experience and use of these fields and claim a position as legitimate communicators in them. On the other hand, they presented narratives on the constitution and character of society and their role within it. Such constellations of interlinked truth claims detailed the alleged nature of social order, the forces threatening it, and the role of the court in facing the latter. Through the propagation of these socio-legal narratives the courts tried to script a discourse on justice, which shaped what people considered just and unjust solutions to particular social issues, from violent disputes to conflicts over marriage.

In both of the above areas, courts showed a particular tension between being fundamentally involved in and, at the same time, trying to transcend ordinary human practices and experiences. In communicative practice, courts on the one hand emphasized the boundaries between communicative fields, by complicating mutual accessibility through the use of a specific language or jargon, or by limiting access to certain speech situations physically. Yet at the same time, they also facilitated attempts to bridge these boundaries, providing occasions on which people could engage with other communicative fields, or deploying intermediaries, such as advocates, to mediate between forms of speech. Discursively a similar tension was present. In their socio-legal narratives, courts acknowledged many of the alternative solutions for the prevention and overcoming of social disorder, from other courts to feuding practices and forms of private vengeance. While thus stressing their embeddedness in socially-ingrained systems of dispute resolution, their own role in these narratives was always that of supreme guardian and arbiter, catering to people's individual desire for justice, while surveying its broader social implications. Be it on the basis of royal supremacy, a God-given jurisdictional hierarchy, or the representation of an urban community, these courts in the end staked a fundamental claim to social transcendence. The tension between social embeddedness and transcendence could furthermore be seen in the courts' internal forum. Within these institutions, members' private interests were often at loggerheads with the professed corporate identity and intentionality of the body as a whole. Court communities knew a range of enacted and discursive measures to counter such internal tensions, including the use of nomenclature that emphasized institutional continuity and practices of oath swearing. Thus both internally and externally courts

tried to script the relation and interaction between themselves and the social structures in which they operated, attempting to control the measure of involvement in or transcendence of society.

The courts' embeddedness in social structures thus had strong implications for the matters that concerned them in daily practice and the related activities that they employed. As Smail and others have argued, courts' success as socio-legal format was dependent on the law's consumers. The latter stimulated the growth of courts by investing in individual legal processes to pursue their private socio-economic interests. Yet that does not mean that the courts themselves can be left out of the picture. In trying to sell potential consumers, either litigants or audiences, their solutions to alleged social issues, these bodies directed their attention and means at influencing communicative flows and their contents. To become an attractive solution for settling disputes and guaranteeing social order, these courts needed to press a successful claim on socio-legal legitimacy. In order to do so, they both made active use of and tried to define the linguistic capital of a number of interconnected communicative fields. As such the law's consumers were not only enticed to accept the socio-legal authority of courts, but also to reconsider their definition of justice.